BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 94-116-S - ORDER NO. 95-838

APRIL 6, 1995

IN RE: Application of Wildewood Utilities, Inc. for Approval of an Increase in Sewer Rates and Charges.	) ORDER DENYING) RECONSIDERATION)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the March 24, 1995 Petition for Reconsideration of our Order No. 95-606, filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). For the reasons elucidated below, the Petition must be denied.

The Consumer Advocate states that the Commission erred in finding that the information sought by the Consumer Advocate on the plant impact fee was not relevant to the present proceeding, and is not likely to lead to the discovery of admissible evidence. The Consumer Advocate states that the information is relevant to the Commission's review of Wildewood Utilities, Inc.'s (Wildewood's or the Company's) earnings during the test period at issue in the case, given that the Company does not intend to escrow funds collected from plant impact fees.

The Commission would note that Wildewood has not filed for a change in the plant impact fee, and in fact, has filed its Application under S.C. Code Ann.§58-5-210 et. seq. Section

58-5-240 sets out the parameters for filings in rate cases in gas, water, sewer, and other cases. Subsection (a) states as follows:

> Whenever a public utility desires to put into operation a new rate, toll, rental charge, or classification of new regulation.... (emphasis added)

Part (b) states that:

> After the schedule has been filed, the Commission shall, after notice to the public, such as the Commission may prescribe, hold a public hearing concerning the lawfulness or reasonableness of the proposed changes. (emphasis added)

It should be noted that the statutory provisions governing these proceedings refer to changes and not rates which are not proposed for change. Hamm v. South Carolina Public Service Commission and Carolina Water Service, Inc., ___S.C.___, 432 S.E.2d 454 (1993) held that in a similar scenario, where plant impact fees had previously been approved by the Commission and no change had been proposed by the Company in a current proceeding, that such a utility rate, which had been previously established in a rate proceeding was presumptively correct, and that the Commission was not required to make factual findings regarding the reasonableness of said plant impact fees.

Further, the Consumer Advocate took the position in that case that plant impact fees could be used only for plant expansion. The Court affirmed the Commission's finding that plant impact fees used for investment in plant, as well as in providing services were fair and reasonable. 432 S.E.2d at 458. These holdings support the Commission's holding in Order No. 95-606, since the Company is

seeking no adjustment of the currently authorized plant impact fee, that the information sought is not relevant to the present proceeding, and is not likely to lead to the discovery of admissible evidence.

It appears to this Commission that the proper place for the Consumer Advocate to have challenged the plant impact fee was in Commission Docket No. 87-67-S, the last time the Commission considered the currently authorized plant impact fee. The Commission approved this fee in Order No. 88-311. In so doing, the Commission found the plant impact fee proposed to be fair and reasonable. No appeal was taken from Order No. 88-311, and the Applicant has been charging the currently authorized plant impact fee since that time, a period of approximately 7 years.

Further, the Commission has authorized the same plant impact fee in the former Valhalla service area. This was authorized in Order No. 93-759, dated August 20, 1993 in Docket No. 93-369-S. This Order adopted the same rates and charges as had previously been ordered in Order No. 93-74. Order No. 93-74, an Order made on remand from the Circuit Court after an appeal by the Consumer Advocate of an earlier Order, in Docket No. 88-451-S, was the result of a compromise and settlement of the Consumer Advocate's appeal, and was entered into with the consent of the Consumer Advocate. Since the Consumer Advocate agreed to the plant impact fee, and a prior Order resulted, the Commission believes that the ability of the Consumer Advocate to challenge the propriety of the currently authorized plant impact fee for the Valhalla Company has

been negated.

Further, monies collected pursuant to the currently authorized plant impact fee are not included in the Applicant's earnings for ratemaking purposes. These monies are deemed contributions in aid of construction, and are subtracted from the Company's rate base.[1] Therefore, the Consumer Advocate's protestations regarding his inability to investigate the earnings of the Company through his lack of information on the plant impact fee are unavailing.

In summary, the Petition for Rehearing of our Order must be denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

1. The Commission, however, reserves the right to apply operating margin methodology for ratemaking in this case. See Patton v. South Carolina Public Service Commission, 280 S.C. 288, 312 S.E.2d 257 (1984).